

REMARKS

Status Of Pending Claims

Claims 1 through 24, 36 through 87 and 94 through 141 remain pending in the application.

Information Disclosure Statement

The Examiner suggested that the second page of Information Disclosure Statement filed on 7 August 2003 was “apparently omitted.” The Examiner is reminded that the Examiner has not, in fact, examined the complete prosecution history, but has only examined the on-screen visual image made available to the Examiner after scanning of the Application. In fact, the entire Application was page-counted immediately part to filing in the United States Patent and Trademark Office, and no pages were omitted. To rectify the loss, omission or misplacement of the second page of the Information Disclosure Statement however, on 15 February 2005 Applicant re-submitted the Information Disclosure Statement by filing total of ten sheets. That comprised of the originally filed Information Disclosure Statement.

Applicant respectfully requests the Examiner to carefully review all pages of the application and claims, together with the drawings to assure that Office has maintained the integrity of completeness of Applicant’s file.

Election of Species under 37 C.F.R. §1.146

In the unnumbered Paper mailed on 10 February 2005, the Examiner imposed a requirement for election of species under 37 C.F.R. §1.146, from among the following ten “patentably distinct

species of the claimed filter” identified by the Examiner:

1. species A illustrated by Figures 1a-c;
2. species B illustrated by Figure 6;
3. species C illustrated by Figure 8;
4. species D illustrated by Figure 9;
5. species E illustrated by Figure 10;
6. species F illustrated by Figure 12;
7. species G illustrated by Figure 13;
8. species H illustrated by Figure 14;
9. species I illustrated by Figure 20; and
10. species J illustrated by Figure 21.

Additionally, the Examiner has requested election between the following “patentably distinct species of the claimed electrodes:”

- a. species a illustrated by Figure 11A;
- b. species b illustrated by Figure 11B;
- c. species c illustrated by Figure 11C; and
- d. species d illustrated by Figure 11D.

Applicant respectfully traverses the election requirement imposed in the Office action, but

provisionally elects, *with traverse*, species of filter “A” represented, in part, by Figures 1a-c. Additionally, Applicant provisionally elects with traverse, the species of electrode that is, in fact, represented by Figure 11A.

It is submitted that there, in fact is no basis in the application for the Examiner to divide his examination into ten different species solely on the basis of the type of filter used, or upon the pattern of the electrodes illustrated by Figures 11A-11D. Furthermore, only the pattern of the electrode is different; this is no explanation of the Examiner’s assertion that these are patentably distinct species. Moreover, and as is confirmed by the un-numbered Paper, the instant Application discloses numerous species and most, if not all of the pending claims may be considered generic to those species. These species have several features, characteristics and modes of operation, and consequently, the issues of patentability are particular to each claim, and each claim therefore, must stand or fall individually on the specific issue of patentability, independently of any other claim.

Appellant notes that the several Figures which comprise the drawing submitted in this Application, was prepared pursuant to 37 CFR §1.81(a) and (b) in order to illustrate the different feature in conformity with 37 CFR §1.83(a) of several possible implementations of Appellant’s inventions, and were not drawn in an effort to represent discrete species of Appellant’s inventions.

Based upon the review of each of these ten figures, there seems to be little justification for the Examiner’s attempt to divide the generic concept of your application in terms of the filters. Moreover, there seems to be little difference in terms of the drawings, between the embodiments defined by Figures 1a-c, 6, 10, 13, 14, 20 and 21(species A,B,E,G,H,I and J). Indeed, the Examiner

has made no effort to distinguish between these species, and has not explained how he views the species of Figures 6 and 10 as being different. As to why the Examiner separated these species is not explained in the Office Action, although current case law requires that requirements for restriction “provide a clear demarcation between the restricted subject matter to allow determination and claims in continuing applications are consonant and therefore deserving of §121's protections.” *Geneva Pharmaceuticals, Inc. v. Glaxo SmithKline PLC* 68 USPQ2d@1871. Here, the Examiner made no effort to identify demarcation. Consequently, the action is incomplete under 37 C.F.R. §1.104(a), (b) and (c). Clarification and completion of this requirement in subsequent Office correspondence is mandatory.

Currently, claims 1-24, 36-87 and 94-141 inclusive read upon the elected species of filter and electrodes.

In view of the above, it is requested that the election requirement be withdrawn. It is further submitted that the application is in condition for examination on the merits, and early allowance is requested.

Respectfully submitted,



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